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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/222,282	12/28/98	RASPER	

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EXAMINER
TRAN, K

ART UNIT	PAPER NUMBER
3724	

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GROUP 3700

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 20

Application Number: 09/222,282
Filing Date: December 28, 1998
Appellant(s): RASPER ET AL.

Russell L. Johnson
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed April 17, 2001.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that all claims stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

5,761,976	Bailey	6-1998
5,904,283	Kanbar	5-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Art Unit: 3724

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey in view of Kanbar. Bailey discloses all the recited limitations of the invention except for the a worm gear and worm shaft.

Kanbar teaches a worm gear and worm shaft to drive the shaft of a roller (fig. 1, col. 3, lines 29-37). It would have been obvious to one of ordinary skill in the art to provide the apparatus of Bailey with a worm gear and worm shaft to 1) eliminate the need to manually drive the shaft (44) of Bailey which indexes the circular knife and 2) it is well known in the art to provide a worm gear and worm shaft mechanism to generate rotary motion.

(11) Response to Argument

Applicant contends that there is no motivation to provide the apparatus of Bailey with the worm gear and worm shaft of Kanbar. The Examiner disagrees with this contention. Kanbar was cited to show that the combination of a worm gear and worm shaft is a well-known mechanism for generating rotary motion. As taught by Bailey in column 3, lines 50-51, the knife assembly may be an automatic indexing unit, rather than a manual indexing unit. To modify Bailey to include a commonly utilized engineering mechanism such as worm gear and worm shaft would be within the skill level of one of ordinary skill in the art and not be non-obvious.

Applicant argues that the 35 USC 103(a) rejection based on the April 15, 1997 filing date of Bailey is improper. The Examiner's 35 USC 103(a) rejection was based on a combination of a 102(e)/103 rejection based on the earlier filing date of Bailey. The earlier filing date of Bailey is considered prior art under § 102 (e) and therefore can be

Art Unit: 3724

taken into consideration in support of a § 103 obviousness rejection of the later filed application. See *In re Bowers*, 53 CCPA 1590, 359 F. 2d 886, 149 USPQ 570 (1966).

Therefore, the rejection under 35 USC 103 (a) is proper.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



knt

October 30, 2001

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Conf
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